

PATENT
674502-2000.2**REMARKS**

Reconsideration and withdrawal of the rejections of the application is respectfully requested in view of the amendments and remarks herein.

I. STATUS OF THE CLAIMS AND FORMAL MATTERS

Claims 1, 2, 4 and 5 are now pending. Claims 1, 2, 4 and 5 have been amended, and claims 3 and 6-30 have been cancelled, without prejudice, without admission, without surrender of subject matter, and without any intention of creating any estoppel as to equivalents.

No new matter is added.

It is submitted that the claims, as originally presented and as herein presented, are patentably distinct over the prior art cited by the Examiner, and that these claims are in full compliance with the requirements of 35 USC 112. Amendments to the claims, as presented herein, are not made for the purpose of patentability within the meaning of 35 USC sections 101, 102, 103 or 112. Rather, these amendments are made simply for clarification and to round out the scope of protection to which Applicants are entitled. Support for the amended claims is found throughout the specification and in the claims as originally presented.

II. THE PRIORITY STATEMENT HAS BEEN UPDATED

The July 14, 2003 Office Action requested that the status of all priority applications be updated. Additionally, the Office Action questioned a priority claim to USSN 08/124,771. It is respectfully submitted that the claim of priority to USSN 08/124,771 is not made directly through the present application. Instead, the immediate parent of the present application, USSN 08/264,036, is a continuation-in-part of USSN 08/124,771. The specification has been amended herewith to clarify the priority of the present application and to update the status of all mentioned applications.

III. THE REJECTIONS UNDER 35 U.S.C. §112 ARE OVERCOME

Claims 1 and 2 were rejected under 35 U.S.C. §112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claims the subject matter which applicant regards as the invention. Specifically, the use of the phrase "free from total cell components" is objected to.

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And, claims 3-7 were rejected under 35 U.S.C. §112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the use of the phrase "binding affinity" is objected to.

The rejections are respectfully traversed and will be addressed together.

The amendments to the claims herein have cancelled claims 3, 6 and 7 without prejudice. Claims 1, 2, 4 and 5 have been amended without prejudice such that the phrase "free from total cell components" has been removed, as has the phrase "binding affinity". Therefore, the rejections are now moot.

Consequently, reconsideration and withdrawal of the rejections under 35 U.S.C. §112, second paragraph, are respectfully requested.

IV. THE DOUBLE PATENTING REJECTION IS OVERCOME

Claims 1-7 were rejected under the judicially created doctrine of obviousness-type double patenting as allegedly unpatentable over claims 1-7 of U.S. Patent No. 6,300,101. The rejection is respectfully traversed.

Submitted herewith is a Terminal Disclaimer. Consequently, reconsideration and withdrawal of the rejection is respectfully requested.

V. TERMINAL DISCLAIMER

Claims 1-7 were rejected under the judicially created doctrine of obviousness-type double patenting as allegedly being unpatentable over claims 1-7 of U.S. Patent No. 6,300,101 ("the '101 patent"). For the purposes of expediting prosecution, without any admission, without any prejudice, without surrender of subject matter, without any intention of creating any estoppel as to equivalents, a Terminal Disclaimer as to the '101 patent is herewith provided herein:

I, Thomas J. Kowalski, declare that I am the attorney of record and that I am authorized to execute terminal disclaimers on behalf of Board of Regents, The University of Texas System ("the Board of Regents"), the assignee of the above-captioned application ("the present application") and U.S. Patent No. 6,300,101 ("the '101 patent");

That the Board of Regents has a place of business at 201 West 7th Street, Suite 820, Austin, Texas, 78701-2981;

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That the Board of Regents is the assignee of the entire right, title and interest in, to and under U.S. Patent application Serial No. 09/973,406, filed October 9, 2001 (the present application) as a divisional of U.S. Application Serial No. 08/264,036, filed June 22, 1994, now U.S. Patent No. 6,300,101 ("the '101 patent"), by virtue of the assignment from the inventors as set out at Reel 7103 and Frame 0318, where said assignment was recorded at the U.S. Patent and Trademark Office on August 19, 1994;

That the Board of Regents is the assignee of the entire right, title and interest in, to and under U.S. Application Serial No. 08/264,036, filed June 22, 1994, now U.S. Patent No. 6,300,101 ("the '101 patent"), by virtue of the assignment from the inventors as set out at Reel 7103 and Frame 0318, where said assignment was recorded at the U.S. Patent and Trademark Office on August 19, 1994;

That the Board of Regents hereby disclaims the terminal part of any patent granted on the present application which would extend beyond the expiration date of the full statutory term of the '101 patent;

That the Board of Regents hereby agrees that any patent so granted on the present application shall be enforceable only for and during such period that the legal title to said patent shall be the same as the legal title to the '101 patent, this agreement to run with any patent granted on the present application and to be binding upon the grantee, its successors or assigns;

That no terminal part of any patent granted on the present application is disclaimed prior to the full statutory term of the '101 patent, in the event that said '101 patent earlier expires for failure to pay a maintenance fee, is held unenforceable, is found invalid, is statutorily disclaimed in whole or is terminally disclaimed under 37 C.F.R. §1.321(a), has all claims canceled by a reexamination certificate, or is otherwise terminated prior to expiration of its full statutory term, except for the separation of legal title stated above;

In accordance with 37 C.F.R. § 3.73(b), the undersigned attorney of record, empowered to sign this Statement on behalf of the assignee, states that the Board of Regents, is the assignee of the entire right, title and interest in the patent and patent application identified above (the present application and the '101 patent) by virtue of the assignment identified above.

And thus, that the undersigned has reviewed documents in the chain of title of the patent and patent application identified above and, to the best of the undersigned's knowledge and belief, title is in the assignee identified above.

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Reconsideration and withdrawal of the double patenting rejection are respectfully requested; and, consideration and entry and recordal of this Terminal Disclaimer are also earnestly solicited, with any fee therefore or any overpayment in such fees, to be charged or credited to Deposit Account No. 50-0320.

CONCLUSION

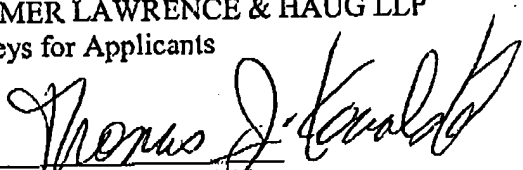
Reconsideration and withdrawal of the rejections of the application are respectfully requested in view of the amendments and remarks herein, which place the application in condition for allowance. Prompt issuance of a Notice of Allowance is earnestly solicited.

The undersigned looks forward to hearing favorably from the Examiner at an early date.

Respectfully submitted,

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